IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.199 OF 2003

Y.K.Shankardass. .. Petitioner

Vs.

The State of Maharashtra & Anr. .. Respondents

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Shri B.B.Tiwari for the Petitioner.

Shri B.H.Mehta, APP for the Respondent No.1.

Ms T.H. Puranik for the B.M.C.- Respondent No.2.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 24th JANUARY, 2005.

P.C.

1. The Petitioner challenges the order issuing the process against the Petitioner in Criminal Case No.6/P of 1999 pending in the Court of Metropolitan Magistrate, 41st Court, Dadar, Mumbai.

2. The perusal of the complaint discloses that the same has been filed for the offence punishable in terms of the provisions of law comprised under Section 52 read with Section 43 of the Maharashtra Regional Town Planning Act, 1966. The F.I.R. which was lodged in the matter apparently discloses the allegation of

carrying out of the repairs pursuant to the N.O.C. being obtained by the Petitioner and one Shri S.P.Jain and Simultaneously of carrying out the unauthorised construction in violation of the approved plan to the extent of 400 sq.ft. The contention of the learned Advocate for the Petitioner is that though the Petitioner is the N.O.C. holder in relation to the repairs carried out, the alleged illegal construction has not been done by the Petitioner. Whether the construction which has been illegally done has been done by the Petitioner or by Shri S.P.Jain or both of them in collusion with each other, is a matter to be dealt with on the basis of the evidence to be led by the parties, and at this stage, the Court will have to proceed on the basis of the facts disclosed in the complaint or the F.I.R. Once the F.I.R. apparently discloses the allegation of unauthorised construction by the Petitioner and one S.P.Jain in collusion with each other and the Petitioner being one of the N.O.C.holders in relation to the building in question, and unauthorised construction is said to have been carried out, the provisions of law comprised under Section M.R.T.P. Act are attracted, and therefore, no fault can be found with the order issuing process against the Petitioner.

3. It was sought to be argued that in case of some other Accused, the petition filed by him has been fixed for final hearing after issuance of the notice. Merely in the other case, the petition has been fixed for final hearing after issuance of the notice, that itself cannot be a justification for entertaining the present petition. The law on the point of interference by the Court in writ jurisdiction under Article 227 of the Constitution of India or under Section 482 of the Code of Criminal Procedure, 1973, in case of issuance of process on the basis of the complaint or the F.I.R., is well settled. Once the F.I.R. or the complaint prima facie discloses the facts constituting offences sufficient for issuance of process by the Magistrate, and the Magistrate issues process accordingly, it does not warrant interference in exercise of writ jurisdiction. Considering the same, therefore, as the F.I.R. in the case apparently discloses the alleged offence, howsoever the good defence the Petitioner may have on merits of the case, that would not justify interference in the order issuing process against the Petitioner, and hence the petition fails and is accordingly rejected.